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Before the
FEDERAL COMMUNICATIONS COMMISSION
 Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
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ITFS 2000, Emergency Petition for)
 Postponement of the July 3-10, 2000, Filing)
 Window for Two-Way Multipoint Distribution) DA 00-666
 Service and Instructional Television Fixed)
 Service Applications)

OPPOSITION TO EMERGENCY PETITIONS

Prominet, Inc. ("Prominet"),¹ by its attorneys and pursuant to Section 1.45 of the Commission's Rules,² respectfully submits its opposition to the Emergency Petitions filed by ITFS 2020, L.L.C. ("ITFS 2020") and the Association of Federal Communications Consulting Engineers ("AFCCE") (collectively, the "Petitioners"). The Petitions filed by ITFS 2020 and the AFCCE must be dismissed. As an initial matter, given the fact that the Petitions were filed ten weeks after the Commission announced the filing window,³ these filings are untimely under the Commission's rules. Moreover, even if the Commission considered the issues raised within the Petitions, the Commission will find that the issues raised by ITFS 2020 and the AFCCE are essentially complaints about convenience—not necessity. Finally, further delay of the filing

¹ Prominet, Inc. is a commercial entity that leases ITFS spectrum from licensees for commercial operations in seven markets in the East Coast, specifically New York, Pennsylvania, Vermont, and Massachusetts. The company is preparing to conduct two-way operations in Utica, NY, under the auspices of a developmental authorization.

² 47 C.F.R. § 1.45(a).

³ Public Notice: Commission Announces Initial Filing Window for Two-Way Multipoint Distribution Service and Instructional Television Fixed Service, DA 00-666 (rel. Mar. 23, 2000) ("*Filing Window Public Notice*").

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windows established by the Commission to receive applications for two-way operations in the Multipoint Distribution Service, Multichannel Multipoint Distribution Service, and Instructional Television Fixed Service (“MDS/ITFS”) would harm the public interest by threatening the introduction of such operations in these services.

I. THE PETITIONS ARE UNTIMELY FILED

The Commission released the *Filing Window Public Notice* on March 23, 2000. While the Petitions are not captioned as such, they essentially request the Commission to reconsider the dates established under the *Filing Window Public Notice*.⁴ As such, these filings are nothing more than petitions for reconsideration. Under the Commission’s rules, all petitions requesting reconsideration or review of Commission decisions or other final actions “shall be filed within 30 days from the date of public notice of the final Commission action.”⁵ As such, the due date for any petitions for reconsideration was April 24, 2000. The present Petitions, however, were filed June 6, 2000—53 days after the date established by rule and statute for such pleadings. No substantive attempt was provided to justify the gross tardiness of these requests to revise the filing window deadlines. On procedural grounds alone, given the tardiness of these filings, the Commission should dismiss them.⁶

⁴ The AFCCE has styled its petition as a request for “*Revision* of [the] Initial Filing Window.” ITFS 2020 is more careful in its petition, but essentially, it asks for a revision of the deadline.

⁵ 47 C.F.R. § 1.106(f).

⁶ In the alternative, these petitions could be characterized as requests for extensions. If this is the case, the Commission’s policy is “that extensions of time shall not be routinely granted.” 47 C.F.R. § 1.46(a). As discussed herein, there is nothing in the Petitions that would satisfy the high standard the Commission has established for granting extensions of time.

II. THE ISSUES RAISED IN THE PETITIONS LACK SUFFICIENT MERIT TO SUPPORT REVISING THE FILING WINDOW

A. The Complaints Regarding the Software Merely Concern Convenience, Not Performance

Both ITFS 2020 and the AFCCE complain that the software packages used to prepare the two-way authorization packages are not functional or reliable.⁷ Yet, a close look at what issues are actually raised by these parties reveals that their complaints do not go to the ability of the software to perform as needed, but rather, that the software does not perform in the manner ITFS 2020 or the AFCCE would like. For example, ITFS 2020 complains that the software is not “capable of incorporating data from any other package” or that it cannot “accept[] data from a diskette or CD-ROM.”⁸ The AFCCE grumbles that “neither [available] software package can read files produced by the other.”⁹ Both parties gripe that extensive training is necessary to use the software.¹⁰

Yet, none of these issues goes to the ability of the software to perform the necessary analysis. Rather, these are issues of convenience and ease of use. While it would be nice if each of the software packages were easy to learn and had additional features making them easy to use, the bottom line is that each of the packages is capable of performing those tasks that are necessary to the filing of the necessary two-way applications in a timely manner.¹¹ The

⁷ See ITFS 2020 Petition, 7; AFCCE Petition, 4.

⁸ ITFS 2020 Petition, 7.

⁹ AFCCE Petition, 4.

¹⁰ See ITFS 2020 Petition, 8; AFCCE Petition, 4.

¹¹ CelPlan certainly stands behind its product. It has taken the step to write to each of its clients and state to them plainly that its software is a reliable and accurate engineering tool.

complaints of ITFS 2020 and the AFCCE notwithstanding, there simply is no need to extend the filing window simply to ensure that more “bells and whistles” are available for this software.

B. The Data Necessary To Prepare Applications Is Available

ITFS 2020 and the AFCCE also bewail the fact that the Commission’s electronic database is not what they would like it to be.¹² The complaints include quibbles about the inability to search the electronic database, that the file names are not user friendly, and that the electronically data that is available may not be as accurate as possible.¹³ Again, each of these “problems” does not truly go to the ability or inability to prepare the necessary studies to support a two-way application. Rather, each of these complaints goes to the convenience of conducting the necessary research and preparing the required applications for two-way operations.

The files, as both ITFS 2020 and the AFCCE admit,¹⁴ have been available and continue to be available in paper format from the FCC. In fact, this information has been available from since the day the *Filing Window Public Notice* was released. Put another way, this information has been accessible and available for over two months now. Granted, the using paper files is not nearly as easy or convenient as using an electronic database. But, convenience and ease is not the issue. Rather, the issue is whether the necessary data is available to perform the necessary tasks—it is. What is apparent, however, is that the petitioners want the FCC to expend Commission resources to do their work for them. This excuse is insufficient to postpone the introduction of a service that the Commission has concluded is in the public interest.

¹² See ITFS 2020 Petition, 9-11; AFCCE Petition, 5.

¹³ See ITFS 2020 Petition, 9-10.

¹⁴ See ITFS 2020 Petition, 10 (noting that all of the information is available in the FCC’s public reference room); AFCCE Petition, 4.

C. The Procedural Rules Are Sufficiently Clear To Permit Applicants To Complete and Timely File Two-Way Applications

ITFS 2020 makes the remarkable claim that a postponement is necessary to clarify “all outstanding issues relating to the two-way application process” so that licensees will be able “to successfully file accurate and grantable applications.”¹⁵ All of this belies the fact that the Commission has already devoted a substantial amount of resources to explaining and defining clearly the procedural requirements to accomplish an accurate and grantable application. For instance, the Commission has issued two orders in which components detailed application processing and procedures.¹⁶ The new FCC Form 331 includes an elaborate set of instructions to assist applicants in completing the information. If that is not enough, even ITFS 2020 concedes, the FCC staff has stepped in to answer additional questions.¹⁷

However, as in the case of the software and the database, all of these efforts are not enough for the petitioners. For example, ITFS 2020 suggests that the Commission should issue a “frequently asked questions” document and to hold a public forum to address these “open” application issues.¹⁸ Again, while such additional measures would provide additional guidance and insight, given the extensive guidance and insight already provided, the marginal benefits to be gained here are not sufficient to justify postponing the filing window. The requests to revise the filing window to a later time must be denied.

¹⁵ ITFS 2020 Petition, 13.

¹⁶ *See Amendment of Parts 21 and 74 To Enable Multipoint Distribution Service and Instructional Television Fixed Service Licensees To Engage in Fixed Two-Way Transmissions*, Report & Order, 13 FCC Rcd 19112 (1998) (“*Two-Way Order*”); Report & Order on Reconsideration, 14 FCC Rcd 12764 (1999) (“*Two-Way Reconsideration Order*”).

¹⁷ ITFS 2020 Petition, 12.

¹⁸ *Id.* at 13.

III. THE PUBLIC INTEREST WOULD BE HARMED BY FURTHER DELAY IN THE INTRODUCTION OF TWO-WAY MDS/ITFS OPERATIONS

The Commission has found that the implementation of two-operations in MDS/ITFS will bring “enormous benefits to existing ITFS licensees, both in increasing the value of their licensed spectrum and in permitting them to provide an array of new services.”¹⁹ For example, one such benefit would be the opportunity for these services to close the digital divide through the provision of wireless broadband services.²⁰ Additionally, the Commission has noted that adoption of these rules would expand the services that could be offered by the MDS/ITFS licensees to include advanced video-conferencing, distance learning opportunities, and expanded continuing education offerings and capabilities.²¹

The MDS/ITFS industry is hoping to move into the world of broadband Internet offerings and local competition. As the FCC is aware, these industries are moving at light speed. As such, in these industry segments, timing is everything. Any further delay in the ability of MDS/ITFS licensees to offer two-way services, particularly the delays contemplated in the Petitions,²² could jeopardize the economic feasibility of the business plans being developed today to provide these two-way offerings.²³ A delay could be fatal to the competitive entry of MDS/ITFS operators into the broadband market. The result would be to eliminate a source of inter-modal competition, to

¹⁹ *Two-Way Order*, ¶ 10.

²⁰ *Id.* at ¶ 9.

²¹ *Id.* at ¶¶ 6-9.

²² ITFS 2020 asks for a 9 month postponement. ITFS 2020 Petition, 13. If granted, the application window would not open until *April 2001*. This is an eternity in these markets.

²³ The Commission’s experience with the fragile nature of the capital markets with respect to risky ventures in the C-Band auctions of the Personal Communications Service should serve as a valuable lesson.

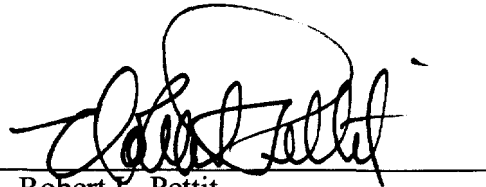
slow the deployment of broadband services in rural markets, and to delay the provisioning of high-speed Internet access to schools and libraries.

IV. CONCLUSION

The requests by ITFS 2020 and the AFCCE to postpone the two-way application filing window are procedurally deficient. Moreover, the issues they raise are merely complaints about ease and convenience, not real issues regarding capability and necessity. As such, they do not justify postponing the introduction of the significant public interest benefits the Commission has identified to two-way MDS/ITFS. For the above reasons, the Petitions must be dismissed and the application window open as previously scheduled.

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CERTIFICATE OF SERVICE

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